

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 580 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements? YES
  2. To be referred to the Reporter or not? YES :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? NO
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO
  5. Whether it is to be circulated to the Civil Judge? NO:

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MAVJI MEGHAJI

Versus

STATE OF GUJARAT  
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Appearance:

MR PJ KANABAR for Petitioners  
MR KP RAVAL for Respondent No. 1  
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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/12/1999

ORAL JUDGEMENT

1. Rule. Learned APP Mr. K.P.Raval waives service of rule on behalf of State. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. The present petitioners are the accused in Criminal Case No. 275 of 1993 pending before the Judicial Magistrate, First Class, at Babara, District

Amreli. On a complaint made by complainant - Rajuben Bhayabhai to the Babara Police Station on 17th July,

1993 against the present petitioner, the investigation started by the Babara Police and the offences was initially registered under Sections 395, 397, 323, 506 (2) of the Indian Penal Code. After investigation, a charge sheet to the court of learned Judicial Magistrate, First Class, Babara, was submitted by the Police for the offences against the accused under Sections 147, 148, 149 and 324 of the Indian Penal Code. The Investigating Agency informed the learned Magistrate that no offence under Sections 395 or 397 appears to have been committed in the matter in view of the evidence found during the investigation.

3. Thereafter, the charge was framed against the accused under Secs. 147, 148, 149 and 114 of IPC for which the charge sheet was submitted by the Babara Police Station. The evidence commenced and complainant Rajuben Bhayabhai was examined by the prosecution as witness before the court. She stated in the chief-examination the ingredients of Sections 395 and 397 of the Indian Penal Code and, therefore, an application from the prosecution came to be filed on 11th July, 1995 vide Exh.25 praying to frame charge under Secs. 395 and 397. It was urged that the charge against the accused under Sections 395 and 397 of the Indian Penal Code is required to be added in view of what is stated by the complainant in her deposition in the examination-of-chief. It appears that from that stage i.e. submitting application at Exh.25 by APP, the deposition of the complainant has not proceeded further. Learned Judicial Magistrate, First Class, Babara, heard A.P.P. and accused and came to the conclusion that having regard to the police papers and investigation, merely on a statement of the complainant in the examination-in-chief, he felt that the charge, as urged by the prosecution under Sections 395 and 397 of the Indian Penal Code was not required to be added or altered and hence the application filed by the prosecution at Exh.25 was rejected by the learned Judicial Magistrate.

4. Being aggrieved and dissatisfied, the State filed the Criminal Revision No. 28 of 1996 against the above said order of learned JMFC dated 9th April, 1996 below Application Exh.25, in the court of Sessions Judge at Amreli.

5. Learned Sessions Judge after hearing both the

parties, allowed the Revision and set aside the order of the learned Magistrate, below Exh.25 rejecting the said application and further learned Sessions Judge directed the learned Magistrate to add the charge under Sections 395 and 397 of the Indian Penal Code against the accused.

6. The learned Sessions Judge observed in his judgment that the court has ample power to alter or add to any charge at any time before judgment is pronounced under Section 216 of the Code of Criminal Procedure. Further, learned Sessions Judge has quoted the ingredients of Sections 395 and 397 of the Indian Penal Code in his judgment. Learned Sessions Judge further observed that in the deposition i.e. in examination-in-chief, the complainant Rajuben Bhayabhai deposed the above mentioned ingredients of Sections 395 and 397 of the I.P.C. which constitute an offence. Therefore, learned Sessions Judge allowed the application at Exh.25 and set aside the order of learned Magistrate, Babara.

7. Being aggrieved by the above said order of the learned Sessions Judge, Amreli, dated 14th October, 1999, in Criminal Revision Application No. 28 of 1996, this Revision Application is filed by the original accused.

8. Learned Advocate Mr. P.J. Kanabar on behalf of the petitioners - original accused and learned APP Mr. K.P. Raval on behalf of the state were heard. The point which is raised in this Revision is in a narrow compass. Whether in the given circumstances, Magistrate was justified in rejecting the application filed by the prosecution to add the charge, for which some statements were made by the complainant in her deposition. The Magistrate court has ample powers to add or alter the charge at any stage of the trial. It cannot be disputed that the complainant in her examination-in-chief stated some ingredients, which constitute offence under Sections 395 and 397 of the Indian Penal Code.

9. The insertion of word "may" in Section 216 shows that the Magistrate has a large discretion to alter and amend the charge. Magistrate is duty bound to exercise such discretion judiciously. He is required to follow the same principle which applies for framing of the charge on Police Report, while adding or altering the charge. This inevitably indicates that charge is to be framed not merely on the basis of the statement of the complainant mentioning particular ingredients of any offence, but Magistrate is required to exercise sound judicial discretion and charge must be framed, or altered

or amended on the basis of the papers and all material available with the Magistrate, which might indicate prima facie ingredients for framing a particular charge. Undoubtedly only prima facie case is to be seen in framing of the charge, but at the same time, Magistrate must satisfy himself about sufficiency of the material prima facie constituting a particular offence. It appears that learned Sessions Judge has lost sight of the above judicial principle, because it clearly appears that while framing charge, the learned Magistrate has satisfied himself that whether there is prima facie case against the accused to frame a charge of particular offence.

10. Learned Magistrate while dealing with this application Exh.25, in its order in para-2 has applied his mind for the framing of the charge, which any Magistrate is required by law to apply. Learned Magistrate has observed that though the complainant has deposed in her examination-in chief the ingredients of Sections 395 and 397 of the Indian Penal Code, which constitute an offence, but all the eye witnesses of the incident i.e. namely Manjulaben Bhayabhai, Badhabhai Jivabhai, Vadhabhai Ramjibhai, Channabhai Danyabhai, Rameshbhai Panchabhai and Kirankumar Nanalal, have not stated anything regarding any ingredient of Section 395 or 397 of the Indian Penal Code in their statement before Police. Therefore, initially, also charge under Sections 395 or 397 of IPC was not framed. Those witnesses are still to be examined by the learned Magistrate and, therefore, at this stage, merely because the complainant has stated some ingredients of Sections 395 and 397 of the Indian Penal Code, the charge under Section 216 can not be altered because as aforesaid learned Magistrate after taking all the materials available with him, refused to alter and add charge under Secs. 395 and 397 of IPC at this juncture.

11. Thus, learned Magistrate, Babara, has given sound reasons for not altering charge at this stage and rejecting the application of the prosecution at Exh.25. Further, charge can be altered at any stage under Section 216 of the IPC. It is open for the prosecution to apply during proceeding at any stage for altering of the charge, if it is felt that there is sufficient prima facie evidence to alter charge and to frame a charge under Sections 395 and 397 of the Indian Penal Code. Prosecution is not debarred from filing a further and fresh application at any further stage of trial to add or alter the charge. However, at this stage, merely because some statement is made by the complainant in her

examination-in-chief, charge cannot be altered especially when the investigating agency was of the opinion that having regard to the statements of the other eye witnesses present at the spot, there was no commission of offence under Sections 395 and 397 of the Indian Penal Code.

12. In view of the foregoing discussion, the order of the learned Magistrate passed below Exh.25 on 9th April, 1996 must hold the ground and the order passed by the learned Sessions Judge in Criminal Revision No.28 of 1996 dated 14.10.1999 setting aside the order passed by the learned Magistrate is quashed and set aside, and that the order of learned Judicial Magistrate, First Class, at Babara is restored.

13. In the result, this Criminal Revision Application is allowed. Rules is made absolute to the aforesaid extent.

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